IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 2885 of 2007()

AGAINST THE ORDER IN ST 1077 2007 IN
ST.1076/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHITTOOR, PALAKKAD

.....

PETITIONER:

P. BHUVANESH, S/O. APPU,
AGED 53 YEARS,5/3021A GOPURAM,NEAR AZHIKODI TEMPLE
THIRUTHYAD, KOZHIKODE.

BY ADV. SRI.P.K.RAMKUMAR
SMT.ANITHA MENON

RESPONDENTS:

---

1. P.V. RAMACHANDRAN, S/O.VELAYUDHAN,
AGED 53 YEARS, RAGAM NIVAS, PERUVEMBA P.O.,
PALAGHAT DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2885 of 2007

Dated this the 13th day of September 2007

O R D E R

The petitioner is the accused in two prosecutions both under Section 138 of the Negotiable Instruments Act initiated by the common complainant that is the first respondent. The petitioner has come to this court with this petition under Section 482 Cr.P.C to quash the said complaints by invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The learned counsel for the petitioner submits that even before the cheques were presented, complaints were raised about the circumstances under which the cheques were obtained from the petitioner. He has a further case that even before the cheques were presented and the prosecution was initiated, a suit was filed claiming return of the cheques. In short, the contention is that the cheque has been issued not for the discharge of any legally enforcible debt/liability. That disputed question of fact cannot obviously be attempted to be resolved by this court in proceedings under Section 488 Cr.P.C. The petitioner must appear before the

learned Magistrate. He shall be at liberty to raise all his contentions in defence of the prosecution under Section 138 of the Negotiable Instruments Act including the contention that the cheques in question were not executed and issued by him for the due discharge of any legally enforcible debt/liability.

3. Reserving the right of the petitioner to raise all such contentions in the course of the trial, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007